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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 167

THE UNITED STATES OF AMERICA, APPELLANT,

VS.

JOSEPH KAHRIGER

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

FILED JULY 1, 1952

PROBABLE JURISDICTION NOTED OCTOBER 13, 1952

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INDEX.

	Original	Print
Record from United States District Court for the Eastern District of Pennsylvania	1	1
Docket entries	1	1
Information	2	2
Motion to dismiss the information	5	3
Opinion, Welsh, J.	6	3
Order dismissing information	12	7
Notice of appeal	13	7
Acceptance of service of appeal papers (omitted in printing)	28	
Designation of record on appeal (omitted in printing)	29	
Clerk's certificate (omitted in printing)	29a	
Defendant's Exhibit 1—Form of Special Tax Return and application for registry—Wagering	31	9
Defendant's Exhibit 1a—Form of Returns—Tax on Wagering	32	10
Defendant's Exhibit 2—Newspaper clipping, The Philadelphia Inquirer, February 19, 1952	33	15
Defendant's Exhibit 3—Newspaper clipping, The Philadelphia Inquirer, November 16, 1951	34	16
Defendant's Exhibit 4—Newspaper clipping, New York Times, March 9, 1952	35	17
Statement of points to be relied upon and designation of record	36	19
Order noting probable jurisdiction	38	19

1 In United States District Court for the Eastern District of
Pennsylvania

Criminal No. 16672

UNITED STATES

vs.

JOSEPH KAHRIGER

Jacob Kossman, Esq.

DOCKET ENTRIES

1952

- 1 Mar. 17 Information, filed.
- 2 Mar. 17 Motion and Order for Bench Warrant filed. Bench Warrant exit.
- 3 Mar. 19 Appearance of Jacob Kossman, Esq., for defendant, filed.
- 4 Mar. 20 Defendant's motion to dismiss information, filed.
- 5 Mar. 24 Bench Warrant returned: "On Mar. 19, 1952 executed", and filed.
- Mar. 28 Bond of defendant in \$500, with Peerless Cas. Co. as surety, filed.
- Apr. 24 Plea:—Not Guilty.
- Apr. 28 Argued sur defendant's motion to dismiss information. C.A.V.
- 6 Apr. 29 Defendant's exhibits 1, 1a, 2, 3 & 4, filed.
- 7 Apr. 29 Transcript of plea, filed.
- 8 May 6 Opinion, Welsh, J., granting motion to dismiss, filed.
- 9 May 6 Order of Court dismissing Information, filed. 5/7/52
- Noted. (Copies Mailed)
- 10 June 5 Government's notice of appeal, filed.
- 11 June 5 Copy of Clerk's Statement of Docket Entries, filed.
- 12 June 5 Government's Statement as to Jurisdiction, filed.
- 13 June 5 Government's Designation of Record on Appeal, filed.
- 14 June 6 Certificate of service and acknowledgment thereof of notice of appeal, filed.

2 UNITED STATES OF AMERICA V. JOSEPH KAHRIGER

2 In United States District Court

[Title omitted]

Willful failure to register for and pay special occupational tax on
wagering.—Title 26 U.S.C. Secs. 3294, 2707 (b)

INFORMATION—Filed March 17, 1952

The United States Attorney charges:—

Count I

That on or about November 26th, 1951, at Philadelphia, in the Eastern District of Pennsylvania, and within the jurisdiction of this Court, JOSEPH KAHRIGER did engage in the business of accepting wagers and did accept wagers, as defined in Title 26, U.S.C., Section 3285, and has willfully failed to pay the special occupational tax imposed by Title 26, U.S.C. Section 3290, due and owing to the United States of America for the year ending June 30, 1952, in violation of Title 26, U.S.C. Sections 3294 and 2707 (b).

The United States Attorney charges:—

Count II

That on or about November 26th, 1951, at Philadelphia, in the Eastern District of Pennsylvania, and within the jurisdiction of this Court, JOSEPH KAHRIGER did engage in the business of accepting wagers and did accept wagers, as defined in Title 26 U.S.C. Section 3285, and has willfully failed to register for the special occupational tax as required by Title 26 U.S.C. Section 3291, in violation of Title 26 U.S.C. Sections 3294 and 2707 (b).

(S.) GERALD A. GLEESON,
United States Attorney.

3/12/52

3-4 Duly sworn to by Gerald A. Gleeson. Jurat omitted in
printing.

In United States District Court

[Title omitted]

MOTION TO DISMISS THE INFORMATION—Filed March 20, 1952

The defendant moves that the information be dismissed on the following grounds:

The statute on which the information is based is unconstitutional in that:

It is a penalty under the guise of a tax; in that it is arbitrary and unreasonable; in that it attempts to regulate by a so-called "tax" an activity which is entirely within the jurisdiction of the state; in that it is not uniform throughout the United States but excludes wagers placed in a wagering pool conducted by a pari-mutuel wagering enterprise licensed under state law, and wagers made by people who are not in the business and unreasonably exempts many other forms of wagers; in that it compels a person to be a witness against himself.

(S.) JACOB KOSSMAN,
Attorney for the Defendant,
1325 Spruce St.

In United States District Court for the Eastern District of
Pennsylvania

No. 16672

UNITED STATES OF AMERICA

vs.

JOSEPH KAHRIGER

OPINION SUR MOTION TO DISMISS THE INFORMATION—Filed May 6,
1952

WELSH, J.:

The defendant, Joseph Kahriger, was proceeded against criminally by Information filed on March 17, 1952. The Information alleged that the defendant was in the business of accepting wagers and that he willfully failed to register for and pay the occupational tax as required by the Act of October 20, 1951, C. 521, Title IV, Sec. 471(a), 65 Stat. 529, 26 U.S.C., Sec. 3290 and 3291. The defendant has filed a Motion to Dismiss the Information on the ground that the law is unconstitutional for various reasons set forth in his briefs.

The question presents many features in connection with taxation that have been the subject of dispute and decisions for the Appellate Courts of the land. At the outset, we decide to recognize the principle that the power of the Congress of the United States to levy taxes is and should be free from judicial control unless the fundamentals of the Constitution of the United States are violated. We recognize the exclusive power of the Congress in the field of legislative enactment, and we recognize it as the only vehicle to express the judgment of our people on the delicate matter of finance.

7 We also are scrupulously meticulous in confining to the Judiciary their peculiar and limited responsibilities in interpreting such legislation. This concept of the judiciary however, requires a recognition of the fact that while the judiciary can express no opinion as to the wisdom of tax legislation or any motives that might have prompted such legislation, the Judiciary has the sacred responsibility of guarding the people against invasion of constitutional rights and protecting the States from an invasion of their Sovereign rights under the guise of taxation when the constitutional safeguards are endangered.

A careful consideration of the cases cited in the briefs submitted by both sides convinces this Court that the subject matter of this legislation so far as revenue purposes is concerned is within the scope of Federal authorities. In other words it is quite clear that the revenue objective of the legislation in question is clearly within the scope of the powers of Congress to express. We desire to say that at the outset, because if there was nothing more to the case than the question of vagueness of the tax, and the discriminatory nature of the tax, the defendant's position would be untenable. But the legislation goes much further than a piece of taxing legislation. It imposes a tax deemed by the Congress fair and reasonable, exempts certain types of wagering and wagerors, which to Congress seemed wise, and requires certain information, which appear to be constitutionally legitimate. This, we think, fairly summarizes the revenue and taxing features of the legislation. If it stopped there the legislation would undoubtedly be sound, but it does not stop there.

When the Act departed from the field of taxable legislation and went into the field of morals and invaded the sanctuary of State control it then became and now is the subject of judicial inspection. In the remarks that we feel constrained to make on this measure we feel it our duty, due to the critical conditions prevailing in our social life of today, to say that we recognize the high purposes of the Congress to curb a present and a growing evil. A person would indeed be blind today if he were not to recognize that the great increase in gambling and forms of related vice has reached a stage that unless controlled or curtailed will undermine the very pillars of our social order and sap the very lifeblood

of our National body. We are convinced from our long contact with the Congress and its members that they must have been appalled by the conditions existing, especially in our big cities, by the revelations of their own congressional investigations.

Now, notwithstanding the laudable and even holy purposes to curb this growing evil, had they the right under the guise of a taxing power to also require that certain information be furnished which is peculiarly applicable to the applicant from the standpoint of law enforcement and vice control? The applicant for registration among many things is required to give the names of other persons, both real and alias, or style, with address of business and residence. Failure to give this information and to comply with the law in certain respects would subject the applicant to a fine of ten thousand dollars (\$10,000) and an imprisonment of five (5) years. This feature of the legislation is presented to throw light on the question as to whether this portion of the measure is a tax bill or a police measure: Is the purpose of the Act and delegation of bureaucratic powers to create revenue or to constitute a host of informers?

In addressing ourselves to the above question we found it necessary to consult the many decisions submitted to us by the parties and those suggested by our own research. A review of the cases serves to throw light upon the progressive character of our revenue laws and reveals the influence brought upon the Congress and the Courts by the economic conditions of the various periods of our development. They clearly show, as in the case of the Firearms Act and the legislation on oleomargarine, and various excise taxes, the impingement of industrial and economic pressure. It would be unwise to give any particular case as a complete authority on the subject without considering the background of each particular case. As we have said, the history of the Act involved in this case has been progressive. But it seems to us that the case which most clearly reveals the silver thread of truth as contained in the decisions is to be found in the case of *United States v. Constantine*, 296 U. S. 287, decided by the United States Supreme Court on December 9, 1935. That case was one wherein the Federal Government levied what the Court declared to be a valid federal excise tax on retail liquor dealers. The excise tax was twenty-five dollars (\$25.00) but the amended Act imposed a special excise tax of one thousand dollars (\$1,000) on such dealers when they carry on the business contrary to local, state or municipal laws and provided a fine and imprisonment for failure to pay. (It will be observed that the 18th Amendment to the Constitution was then in force.)

We quote, in part, from the opinion of Mr. Justice Roberts in the above case, *United States v. Constantine*, as follows:

"In the acts which have carried the provision, the item is variously denominated an occupation tax, an excise tax, and a

special tax. If in reality a penalty it cannot be converted into a tax by so naming it, and we must ascribe to it the character disclosed by its purpose and operation, regardless of name. Disregarding the designation of the exaction, and viewing its substance and application, we hold that it is a penalty for the violation of state law, and as such beyond the limits of federal power."

"The condition of the imposition is the commission of a crime. This, together with the amount of the tax, is again significant of penal and prohibitory intent rather than the gathering of revenue. Where, in addition to the normal and ordinary tax fixed by law, an additional sum is to be collected by reason of conduct of the taxpayer violative of the law, and this additional sum is grossly disproportionate to the amount of the normal tax, the conclusion must be that the purpose is to impose a penalty as a deterrent and punishment of unlawful conduct.

"We conclude that the indicia which the section exhibits of an intent to prohibit and to punish violations of state law as such are too strong to be disregarded, remove all semblance of a revenue act, and stamp the sum it exacts as a penalty. In this view the statute is a clear invasion of the police power, inherent in the States, reserved from the grant of powers to the federal government by the Constitution."

"We think the suggestion has never been made—certainly never entertained by this Court—that the United States may impose cumulative penalties above and beyond those specified by State law for infractions of the State's criminal code by its own citizens. The affirmation of such a proposition would obliterate the distinction between the delegated powers of the federal government and those reserved to the States and to their citizens. The implications from a decision sustaining such an imposition would be startling. *The concession of such a power would open the door to unlimited regulation of matters of state concern by federal authority.* The regulation of the conduct of its own citizens belongs to the State, not to the United States. The right to impose sanctions for violations of the State's laws inheres in the body of its citizens speaking through their representatives."

"Reference was made in the argument to decisions of this Court holding that where the power to tax is conceded the motive for the exaction may not be questioned. These are without relevance to the present case. The point here is that the exaction is in no proper sense a tax but a penalty imposed in addition to any the State may decree for the violation of a state

law. The cases cited dealt with taxes concededly within the realm of the federal power of taxation. *They are not authority where, as in the present instance, under the guise of a taxing act the purpose is to usurp the police powers of the State.*" (underscoring supplied)

No language that we could use would more clearly or more forcefully express the law of the land on this subject. In addition to its being the pronouncement of the Supreme Court of the land on the principle involved, and by which we are bound, we find ourselves in full accord with it, both in letter and in spirit. Today, the simplicity of our former way of life has largely disappeared. Our economic enterprises are myriad. While the desire to curb the underworld activities is a wholesome tribute to our fundamental aspirations, if the fundamental principles claimed by the federal government in this particular case were given the highest Judicial approval, future acts of Government in a field not so free from improper motives, would enable the Central Government to regulate our lives from the cradle to the grave. The remedy would be far worse than the disease.

The Motion to Dismiss is granted.

12 In United States District Court

[Title omitted]

ORDER DISMISSING INFORMATION—Filed May 6, 1952

And Now, this 7th day of May 1952, in accordance with the Opinion of the Court filed May 6, 1952, it is ordered that the information filed in the above entitled case, be and the same is hereby dismissed.

(S.) GEO. A. WELSH,
J.

13 In United States District Court

[Title omitted]

NOTICE OF APPEAL—Filed June 5, 1952

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Eastern District of Pennsylvania, entered May 7, 1952, dismissing the information charging the defendant with wilfully failing to pay the occupational tax of \$50.00 per year as required by 26

U.S.C. 3290, and with failing to register with the collector of his district as required by 26 U.S.C. 3291, all in violation of 26 U.S.C. 2707 (b), and 3294.

(S.) PHILIP B. PERLMAN,
Solicitor General
Department of Justice,
Washington, D. C.

Dated June 5, 1952

14-28 Acceptance of service of appeal papers (omitted in printing)

29 DESIGNATION OF RECORD ON APPEAL—(omitted in printing)

29a Clerk's Certificate to foregoing transcript omitted in printing.

30 In United States District Court

[Title omitted]

SPECIAL TAX RETURN AND APPLICATION FOR REGISTRY—WAGERING

(See instructions on back)

1. Return for period from _____ to June 30, 19____
(Month) (Year)

2. Full name _____
(Print true name followed by trade name)

3. Address _____

Business _____

Residence _____

4. Show by X in one of the following squares nature of application:

☐ First application ☐ Renewal ☐ Change of address (Date) _____

☐ Change of ownership (Date) _____ Former owner _____

5. Name of members of firm or partnership, or officers of corporation.

Name

Title

Home address

(If more space is required for items 6 (a), 6 (b), or 7, continue on reverse side or attach additional sheets, identifying each sheet and entry as to item number.)

6. Are you engaged in the business of accepting wagers for your own account? ☐ Yes ☒ No (check one).

If yes, complete (a), (b), and (c) of this item.

(a) Name and address where each such business is conducted.

Name of location

Street address

City and State

(b) Number of employees or agents engaged in the business of receiving wagers on your behalf _____

(c) True name and residence address of each such person.

Name

Street address

City and State

7. Do you receive wagers for or on behalf of some other person or persons? ☐ Yes ☒ No (check one).

If yes, give name and residence address of each such person.

Name

Street address

City and State

I declare under the penalties of perjury that this application (including any accompanying statement or lists) is hereby made pursuant to subchapter B, 27A, Internal Revenue Code, for the period indicated above to cover the wagering business or businesses stated and at the locations specified has been examined by me, and to the best of my knowledge and belief is true and correct.

Dated _____, 19____

(Signature)

(State whether individual owner, member of firm, or if corporation officer, give title)

This return must be filed with the Collector of Internal Revenue for your district (see par. 3 of instructions for proper place of filing), accompanied by remittance, on or before the last day of the month in which liability is incurred in order to avoid penalties.

FORM 730
Treasury Department
Internal Revenue Service

DEFENDANT'S EXHIBIT 1a

TAX ON WAGERING

(Section 3285 of the
Internal Revenue Code)

I declare under the penalties of perjury that this return (including any accompanying certificates and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signed) _____ (Date) _____

(Title) _____
(Owner, president, partner, member, etc.)

1. Gross amount of wagers accepted during month (not including lay-offs accepted) ... \$ _____
2. Gross amount of lay-off wagers accepted during month (See instruction 3) ... \$ _____
3. Sum of items 1 and 2 ... \$ _____
4. Tax (10 percent of item 3) ... \$ _____
5. Less credits. (No credit allowed unless supported by evidence. See instructions 4 (a) and (b)) ... \$ _____
6. Net tax due (item 4 less item 5) ... \$ _____

MONTH

Penalty ... \$ _____

Interest ... \$ _____

Total due. \$ _____

(THIS SPACE FOR NAME, ADDRESS, AND REGISTRATION NO.)

ORIGINAL RETURN.—This form must be filed, with remittance, with the Collector of Internal Revenue.

IMPORTANT.—Follow instructions carefully.

16-85501-1

INSTRUCTIONS

(For full instructions see Regulations 132)

1. **LAW.**—The Internal Revenue Code imposes a tax upon wagers accepted on or after November 1, 1951.

Section 3285. Tax.—

(a) **Wagers.**—There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.

(b) **Definitions.**—For the purposes of this chapter—

(1) The term "wager" means (A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers, (B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and (C) any wager placed in a lottery conducted for profit.

(2) The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include (A) any game of a type in which usually (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and (B) any drawing conducted by an organization exempt from tax under section 101, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(c) **Amount of wager.**—In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(d) **Persons liable for tax.**—Each person who is engaged in the business

of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

(e) **Exclusions from tax.**—No tax shall be imposed by this subchapter (1) on any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law, and (2) on any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 3267.

(f) **Territorial extent.**—The tax imposed by this subchapter shall apply only to wagers (1) accepted in the United States, or (2) placed by a person who is in the United States: (A) with a person who is a citizen or resident of the United States, or (B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

2. **RETURNS AND PAYMENT OF TAX.**—All taxes are due and payable without any assessment by the Commissioner or notice from the collector. Return, with remittance, covering the tax due under section 3285 for any calendar month must be in the hands of the collector of internal revenue (or his authorized representative) for the district in which the office or principal place of business of the taxpayer is located (or if he has no office or principal place of business in the United States, the Collector at Baltimore, Maryland), on or before the last day of the succeeding month; however, the Commissioner has authority under the law to require the immediate filing of a return and payment of the tax, when such action becomes necessary.

3. **LAY-OFF WAGERS.**—A taxpayer who accepts a lay-off wager from another taxpayer shall report such amount in item 2 of the return

TAX ON WAGERING

(Section 328 of the
Internal Revenue Code)

This copy should be carefully preserved by the taxpayer at his place of business as a part of his records, and should at all times be available for inspection by officers of the Bureau of Internal Revenue. See paragraph "Records" under instructions.

IMPORTANT.—Return with remittance should be sent to the Collector of Internal Revenue for your district and NOT to the Commissioner of Internal Revenue at Washington, D. C. Checks or money orders should be made payable to the Collector of Internal Revenue. (See instructions, par. 2, on reverse of form.) If you have nothing to report, make notation to that effect on this form and return to the Collector of Internal Revenue. If final return is filed, the return should be marked "FINAL RETURN."

1. Gross amount of wagers accepted during month (not including lay-offs accepted) . . . \$
2. Gross amount of lay-off wagers accepted during month (See instruction 3) . . . \$
3. Sum of items 1 and 2 . . . \$
4. Tax (10 percent of item 3) . . . \$
5. Less credits. (No credit allowed unless supported by evidence. See instructions 4 (a) and (b)) . . . \$
6. Net tax due (item 4 less item 5) . . . \$

M.C.N.H.

Penalty . . . \$

Interest . . . \$

Total due. \$

(THIS SPACE FOR NAME, ADDRESS, AND REGISTRATION NO.)

DUPLICATE RETURN.—Do not send to the Collector of Internal Revenue. **IMPORTANT.**—Follow instructions carefully.

16-64501-1

and shall retain a copy of the certificate furnished the taxpayer making the lay-off wager.

4. **CREDITS**—(a) *General credits*.—Any person who overpays the tax due with one monthly return may take credit for the overpayment against the tax due with any subsequent monthly return. If a credit is taken, a statement fully explaining the reason such credit is claimed must be attached to the return. This statement should also show whether any previous claim for credit or refund covering the amount involved, or any part thereof, has been filed; and should list each amount making up the total of the credit, monthly return on which reported, date of payment and, if the tax was paid with respect to more than 1 month, the exact amount of the credit chargeable to each month. A complete and detailed record of all credits must be kept by the taxpayer for a period of at least 4 years from the date the credit was taken. No credit shall be allowed, however (except as provided in the succeeding paragraph), whether in pursuance of a court decision or otherwise, unless the taxpayer establishes (1) that he has not collected the tax either as a separate charge or as part of the wager with respect to which it was imposed, or (2) that he has repaid the amount of the tax to the person making the wager or has secured the written consent of such person to the allowance of the credit. If the credit relates to overpayment of tax with respect to a laid-off wager, the taxpayer must also establish that the tax was not collected by any person, and if collected, that the tax has been refunded to the person who placed the wager originally, or that he has secured the written consent of such person to the allowance of the claim.

(b) *Lay-off credits*.—Under section 3286 (b) a credit may be allowed a taxpayer for tax paid by him or tax due with respect to any wager, if such wager was laid off with another taxpayer who is liable for tax with respect to such laid-off wager. If such a credit is taken, the taxpayer must attach to the return a statement fully explaining the reason such credit is

claimed. This statement should also show whether any previous claim for credit or refund covering the amount involved, or any part thereof, has been filed; and should list each amount making up the total of the credit, monthly return on which reported, date of payment and, if the tax was paid with respect to more than 1 month, the exact amount of the credit chargeable to each month. In addition, there must be attached to the return certificates in the form prescribed in Regulations 132. A complete and detailed record of all credits must be kept by the taxpayer for a period of at least 4 years from the date the credit was taken. No interest is to be allowed with respect to any such credit.

A claim for refund may be filed in any case where a credit may be taken. If claim for refund is filed, the evidence required in the case of a credit must be submitted with the claim for refund.

5. **RECORDS**.—Records shall contain sufficient information to enable the Commissioner to determine the taxability of the transactions and the amount of tax due, and shall at all times be open to the inspection of internal-revenue officers. Such records, including duplicate copies of returns, shall be kept for a period of at least 4 years from the date the tax is due.

6. **PENALTIES AND INTEREST**.—Failure to file on time: 5 percent of the tax if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which the delinquency continues, not to exceed 25 percent in the aggregate. Failure to pay on time before assessment, interest at the rate of 6 percent per annum. Failure to pay within 10 days after issuance of notice and demand based on assessment approved by Commissioner, 5 percent penalty and interest on assessment at rate of 6 percent per annum. Severe penalties for willful failure to pay tax, keep records, file returns, or for false or fraudulent returns are imposed by the Internal Revenue Code.

DEFENDANT'S EXHIBIT 2

The Philadelphia Inquirer

TUESDAY MORNING, FEBRUARY 19, 1952 h★ 21

Major Gamblers Face Indictment Over \$50 Stamp

Gleeson Preparing
Several Cases for
Federal Grand Jury

Indictments charging several well-known gamblers in this area with failing to purchase \$50 tax stamps required by the new Federal law are being prepared for a grand jury now sitting in the U. S. District Court.

U. S. Attorney Gerald A. Gleeson said yesterday his staff was working on "several cases," but would not speculate when indictments would be ready for the jury's consideration.

COMPLAINTS FORWARDED

Meanwhile, it was learned that a number of complaints had been turned over to the Federal prosecutor's office by Francis R. Smith, Collector of Internal Revenue.

According to the collector's records, released yesterday, 54 persons in his First Collection District of Pennsylvania so far have purchased the stamps. All, however, were described by a revenue spokesman, as "minor figures" in the gambling world.

Among those from the Philadelphia area who purchased the stamp on or after Nov. 1, 1951, the effective date under the law, were:

Chauncey Armstrong, Cleveland near Susquehanna aves.; Joseph DiDio, 17th st. near Edgeley; Rose Elizabeth Fulgenzio, Osage ave. near 44th st.; Herman Gecker, Pennsgrove st. near 39th; James Hilsee Garnet st. near Snyder; Harry Jacobs, Gordon st. near 32d; William Knott, Ashmead st. near Wakefield, and Joseph Loscalzo, 12th st. near Catharine.

Also Christy Nicholas, 3d st. near Lombard; Louis Renzulli, Mervin st. near Fitzwater; Harvey Royal, Berks st. near 23d; Morris Schurr, 17th st. near Master; Clifford Schweigart, George st. near Columbia ave.; Marty Louis Sgro, Mercy st. near 20th; Stewart George, 11th st. near Berks; John Warner, 87th ave., near Tinicum st.; Edward Melwig, Somerset st. near 20th, and Charles Rehr, 10th st., near Master.

FROM OTHER COUNTIES

Those listed from other counties included:

Clarence J. Arndt, Middletown; Walter C. Beeler, and Harry Boger, Lebanon; James Joseph Campbell, Marcus Hook; Chris Coumanis, Oxford; Antonio Phillip DiNatali, Ardmore.

Lloyd S. Farrel, Lancaster; George L. Fortuna, Lebanon; Edward V. Gavin, Sr., Phoenixville; Paride A. Glaquinto, Bethlehem; Ann Elizabeth Heckman, Hamburg; Donald Charles Heckman, Hamburg; James Bernard James, Shartelsville; Arthur D. Killmoyer, Lebanon.

John Albert Kirk, Oxford; John Kornberg, Conshohocken; Paul W. Krause, Quentin; James W. Lauer, Lebanon; Edward Lutz, Jr., Shartelsville; Samuel Isaac Lutz, Lebanon; Peter Michniewicz, Shenandoah; Samuel A. Pinkerton, Oxford.

Mary C. Posta and George Rapp Reading; Bertha Rentschler, Hamburg; Elsie Schlappig, Richland; Albert Shanko, Lester; James P. Sims, Oxford; Andrew L. Snell, Lebanon; William Stephens, Newmantown; Beatrice E. Stootd, Bernville.

Laura Sweitzer, Hamburg; John Edgar Tawney, Gettysburg; Thomas J. Welsh, Chester, and John Fulker-son Wolf, R. D. 4, Pottstown.

Phila. Police Told to Aid Registry of Bookies

Philadelphia police were given orders yesterday to cooperate with the Federal Government in the enforcement of its new \$50 license tax on bookmakers by compiling detailed weekly lists of all arrests for bookmaking and numbers writing.

The Federal law went into effect Nov. 1. Since that time the office of the Collector of Internal Revenue has had machinery set up for issuing such licenses, but has had no takers.

In a special notice sent to all Police Inspectors yesterday Superintendent of Police Howard P. Sutton gave them instructions as to listing arrests.

"A Federal law which went into

effect Nov. 1, 1951, requires each person engaged in the numbers game or bookmaking business to pay a special tax of \$50 a year, and to register with the Collector of Internal Revenue his name, residence and place of business where the activity which makes him liable is carried on," the notice said.

"In connection with the above, you shall on Monday, Nov. 19, 1951, and every Monday thereafter, submit a typewritten report in triplicate to this office, listing the name, residence, age and color of each person arrested during the previous week for engaging in bookmaking or the numbers game, stating specifically the charges on which each was arrested."

Mack in Germany

BONN, Germany, Nov. 15 (UP).—Representative Peter F. Mack, the

16 81
Flying Co
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3 Areas Go Dry As Mains Break

Hundreds of residents in three widely separated sections of the city were without water yesterday when three six-inch water mains broke.

Water Bureau crews shut off the flow of water in the area of 2d and Laurel sts., Kensington, when the first break sent water bubbling through the streets in several places near the intersection.

Police set up barricades to halt heavy truck traffic but trolleys kept running in the area after PTC crews tested the street.

A main break at 19th and Ludlow sts. sent water flowing over the streets until it was shut off while repairs were being made. Traffic on Ludlow between 18th and 19th was halted.

At 12th and Pearl sts. another main broke and Water Bureau repairmen shut off the water in that neighborhood while making repairs. Additionally, water began to flood the 2700 block S. Hutchinson st. and water was shut off there. The cause of that seepage was not determined.

OPEN TONITE

DEFENDANT'S EXHIBIT 4

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THE NEW YORK TIMES, SUNDAY, MARCH 9, 1952.

GAMBLER TAX YIELD FAR SHORT OF GOAL

400 Million 'Aim' of Congress
Expected to Falter to 9 Million
—Law Agents Are Scarce

WASHINGTON, March 8 (AP)—Based on current collections the annual revenue from the new gambling tax will be slightly over \$9,000,000 instead of the \$400,000,000 that members of Congress hoped for when they passed the law last year.

The Bureau of Internal Revenue reports that only \$1,455,392 has been collected from 16,029 gamblers who have registered since the law went into effect Nov. 1.

For the first full month of operation, December, gamblers reported that they took in \$7,591,828, and they paid the required 10 per cent tax, which amounted to about \$759,200.

This brought to \$970,964 the total tax collection on gambling operations since Nov. 1. In addition, 2,725 gamblers registered for the first time in January and paid their \$50 occupational stamp tax, raising the number of admitted gamblers to 16,029.

Government officials say revenue is running far below original optimistic estimates because they

do not have enough enforcement agents and because many gamblers are quitting rather than disclose their names and addresses as required by law.

The new law puts a 10 per cent tax on all money handled, not just gambling profits, plus a tax stamp of \$50 a year on all bookies, numbers and lottery operators, and punchboards, all of which are illegal in most states. It forces gamblers to give their names and places of business, but gives them no immunity when they do.

The latest report shows that gamblers have registered in all but three of the sixty-four revenue collection districts: lower Manhattan, Iowa and Vermont. Fifty-seven of those who registered have reported no business and paid no excise tax as yet.

Louisiana gamblers apparently are doing the nation's boom business in betting—they paid \$167,987 in taxes on their gambling take for part of November and all of December, indicating that they had handled \$1,679,870. Illinois is second with \$140,410 in taxes and Ohio third with \$136,247 covering operations through December.

However, in the number of registered gamblers Washington State leads the list with 3,056, almost a fifth of the country's total. The reason: punchboards are legal there, so the gamblers face no threat from the law on that score. Ninety registered in New York State, putting it quite far down on the list.

Only two gamblers have regis-

tered in New Mexico and Wisconsin, four in Nebraska, seven in Maine, six in New Hampshire, nine in Rhode Island and seven in South Dakota.

TOP ROSE TO APPEAR HERE

All-America Winner to Be Seen at Rockefeller Center Display

A series of eight floral displays will begin in the Channel Garden at Rockefeller Center on March 10. The series will end in late September with final plantings of anemones.

In addition to traditional Easter lilies, geraniums, the new daisies, be marked by azaleas, salvia, snapdragons, public showing of the All-American.

The hyacinth plant 4,000 flowers in blue. Twelve hollyhocks will go on. On April 17 3, tulips in shade yellow are scheduled debut, and a in varied h the channel.

On March 10, geraniums, All-Am shown summer lemon

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36-37

[File endorsement omitted]

Supreme Court of the United States

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF
RECORD—Filed October 15, 1952

Pursuant to Rule 13, paragraph 9 of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that the Act of October 20, 1951, c. 521, Title IV, Sec. 471(a), 65 Stat. 529, 26 U.S.C. § 3285, *et seq.*, which imposes an excise tax on wagers and an annual occupational tax on persons in the business of accepting wagers, and requires persons subject to said tax to register with the collector of internal revenue, is unconstitutional as a police measure in derogation of the police power reserved to the states by the Tenth Amendment.

2. The District Court erred in dismissing the information.

Appellant deems the entire record, as filed in the above-entitled case, necessary for the consideration of the points relied upon.

ROBERT L. STERN,
Acting Solicitor General.

October, 1952.

38 Supreme Court of the United States, October Term, 1952.

No. 167

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—October 13, 1952.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.